IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

Bail Appl..No. 4574 of 2007()

PETITIONER : 2ND ACCUSED:

SANTHOSH KUMAR @ MONICHAN,
S/O.THANKAPPAN, PUTHUVAL HOUSE,
THOTTAPPALLY P.O., AMBALAPUZHA, ALAPPUZHA.

BY ADV. SRI.JOHN BRITTO

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY
THE EXCISE INSPECTOR, ALAPPUZHA RANGE,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.4574 of 2007

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Dated this the 27th day of July, 2007

ORDER

Application for anticipatory bail. Petitioner is accused No.2. There are two accused persons. The crux of the allegations against the accused persons is that on 23.12.06, when the Excise party reached at the scene of the crime, they found the 1st accused holding a container containing 1.9 litres of arrack and the petitioner having possession of arrack in a glass and was allegedly taking the glass to his lips to consume. The case of the prosecution is that both the accused persons were engaged in the illicit activity of possession and sale of liquor. The crime has been registered and the investigation is in progress. The petitioner apprehends imminent arrest. The learned counsel for the petitioner submit that the allegations against the petitioner is not true or correct. The allegations are raised falsely with vexatious intent, at any rate, the allegations even if accepted in toto cannot reveal any offence under the Kerala Abkari Act. I have been taken through the seizure mahazar as also the crime and occurrence report.

2. The learned Public Prosecutor vehemently opposes the application. The learned Public Prosecutor submits that the case of the prosecution is that both the accused were engaged in the illicit activity of possession and sale of arrack.

3. I have considered the submissions of the learned counsel for the petitioner. In the wake of the opposition by the learned Public Prosecutor, bail can be granted to the petitioner only if this court is in a position to entertain both the satisfactions under Section 41A of the Kerala Abkari Act. I do not find any circumstances which can persuade this court to entertain either of those two satisfactions on the basis of the materials presently available. I am unable to accept the attempt of the learned counsel for the petitioners to split the conduct of the 1st and 2nd accused persons in two water tight compartments. The case of the prosecution is that both the accused persons were engaged in the illicit activity of sale and possession of liquor. Not withstanding the fact that the 1st accused was found in possession of the container containing 1.9 litres of liquor and the petitioner was found to be in possession of liquor in a glass only, I am of the opinion that it cannot at the moment be assumed or accepted that the petitioner

has no role in the possession and sale of liquor. I am satisfied that this is a fit case where the petitioner must appear before the learned Magistrate or the Investigating Officer and seek regular bail in the normal and ordinary course.

3. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for regular bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj